



SEP 5 2001

In re

:  
: DECISION ON  
: PETITION FOR REGRADE  
: UNDER 37 C.F.R. § 10.7(c)  
:

### **MEMORANDUM AND ORDER**

(petitioner) petitions for regrading his-her answers to questions 4, 5, 8 and 25 of the morning section and questions 2, 4, 19 and 43 of the afternoon section of the Registration Examination held on October 18, 2000. The petition is denied to the extent petitioner seeks a passing grade on the Registration Examination.

### **BACKGROUND**

An applicant for registration to practice before the United States Patent and Trademark Office (USPTO) in patent cases must achieve a passing grade of 70 in both the morning and afternoon sections of the Registration Examination. Petitioner scored 64. On February 5, 2001, petitioner requested regrading, arguing that the model answers were incorrect.

As indicated in the instructions for requesting regrading of the Examination, in order to expedite a petitioner's appeal rights, a single final agency decision will be made regarding each request for regrade. The decision will be reviewable under 35 U.S.C. § 32. The Director of the USPTO, pursuant to 35 U.S.C. § 2(b)(2)(D) and 37 CFR 10.2 and 10.7, has delegated the authority to decide requests for regrade to the Director of the

Office of Patent Legal Administration.

### **OPINION**

Under 37 C.F.R. § 10.7(c), petitioner must establish any errors that occurred in the grading of the Examination. The directions state: " No points will be awarded for incorrect answers or unanswered questions." The burden is on petitioners to show that their chosen answers are the most correct answers.

The directions to the morning and afternoon sections state in part:

Do not assume any additional facts not presented in the questions. When answering each question, unless otherwise stated, assume that you are a registered patent practitioner. Any reference to a practitioner is a reference to a registered patent practitioner. The most correct answer is the policy, practice, and procedure which must, shall, or should be followed in accordance with the U.S. patent statutes, the PTO rules of practice and procedure, the Manual of Patent Examining Procedure (MPEP), and the Patent Cooperation Treaty (PCT) articles and rules, unless modified by a subsequent court decision or a notice in the Official Gazette. There is only one most correct answer for each question. Where choices (A) through (D) are correct and choice (E) is "All of the above," the last choice (E) will be the most correct answer and the only answer which will be accepted. Where two or more choices are correct, the most correct answer is the answer which refers to each and every one of the correct choices. Where a question includes a statement with one or more blanks or ends with a colon, select the answer from the choices given to complete the statement which would make the statement true. Unless

otherwise explicitly stated, all references to patents or applications are to be understood as being U.S. patents or regular (non-provisional) utility applications for utility inventions only, as opposed to plant or design applications for plant and design inventions.

Where the terms “USPTO” or “Office” are used in this examination, they mean the United States Patent and Trademark Office.

Petitioner has presented various arguments attacking the validity of the model answers. All of petitioner's arguments have been fully considered. Each question in the Examination is worth one point.

No credit has been awarded for morning questions 4, 5, 8 and 25 and afternoon questions 2, 4, 19 and 43. Petitioner's arguments for these questions are addressed individually below.

Morning question 4 reads as follows:

4. Regarding amendments to the specification of an application or the claims in an application, which of the following is not true?

(A) If an amendment signed by the applicant is received in an application in which there is a duly appointed registered patent attorney or agent, the amendment should be entered and acted upon.

(B) Where, by amendment under 37 C.F.R. § 1.121(a), a dependent claim is rewritten to be in independent form, the subject matter from the prior independent claim is considered to be “added” matter and should be underlined.

(C) Any amendment using parentheses to indicate canceled matter in a claim rewritten under 37 C.F.R. 1.121(a) may be held nonresponsive.

(D) Amendments to the original patent drawings in a reissue application are not permitted. Any change to the patent drawings must be by way of a new sheet of drawings with the amended figures identified as “amended” and with added figures identified as “new” for each sheet changed.

(E) Amendment to the claims in a nonprovisional application, other than a reissue application may be made by specifying only the exact matter to be added or deleted, and the precise point where the deletion or insertion is to be made, where the change is limited to deletions and/or additions of no more than ten words in any one claim.

The model answer is selection E.

Amendment in said manner is limited to deletions or additions of no more than five words. 37 C.F.R. § 1.121(a)(2)(i)(B). Thus, the answer is not true. (A) is true, and therefore an incorrect answer. MPEP § 714.01(d). (B) is true, and therefore an incorrect answer. MPEP § 714.22. (C) is true, and therefore an incorrect answer. 37 C.F.R. § 1.121(a); MPEP § 714.22. (D) is true, and therefore an incorrect answer. 37 C.F.R. § 1.121(b)(3)(i).

Petitioner argues that answer (A) is correct. Petitioner contends that without assuming facts not presented, the amendment in (A) would not be entered and thus (A) is an incorrect statement and the right answer. Petitioner contends that fees could be due, the amendment could be nonresponsive or even after a final rejection, thus petitioner argues the amendment would not be entered.

Petitioner’s arguments have been fully considered but are not persuasive. Petitioner’s arguments are based on facts not given in answer (A), such as the amendment is filed after a final rejection or extension of time fee is required. The examination

instructions state do not assume facts not given. The model answer is (E), which is an incorrect statement because an amendment in said manner is limited to deletions or additions of no more than five words. 37 C.F.R. § 1.121(a)(2)(I)(B). Accordingly, model answer (E) is correct and petitioner's answer (A) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Morning question 5 reads as follows:

5. You filed a U.S. patent application for Pete, obtaining an effective filing date of January 5, 1999, for a legal slot machine, fully disclosing and claiming only one claim as follows. Claim 1. A slot machine comprising: a cylindrical drum mechanically coupled to a motor; an electronic random data generator electrically coupled to the motor; and a push button coupled to the random data generator. You received a non-final Office action dated September 20, 1999. The examiner rejected claim 1 under 35 U.S.C. 102(e) as anticipated by a U.S. patent dated May 4, 1999 to Bud. The examiner stated and pointed out that the Bud patent, filed January 7, 1998, disclosed a slot machine with a cylindrical drum mechanically coupled to a motor; a mechanically spinning random data generator electrically coupled to the motor; and a push button coupled to the random data generator. The examiner further stated, "The examiner takes official notice that it was well known by those of ordinary skill in the art of slot machines, prior to applicant's invention, to use interchangeably either a mechanically spinning, or an electronic random data generator." The examiner did not provide any references to support the official notice. Which of the following timely filed replies to the Office action (compared to each other) is best?

(A) Traverse the rejection arguing that the examiner's use of official notice was improper because the examiner did not provide any references to support the official notice.

(B) Traverse the rejection arguing that Bud's invention was patented after Pete's effective filing date.

(C) Amend Pete's claim to further include a flat screen video monitor display and point out that the newly added feature distinguishes Pete's invention over Bud.

(D) Traverse the rejection arguing that the examiner did not create a prima facie case of obviousness because the examiner did not show why one of ordinary skill in the art of slot machines would be motivated to modify the patent to Bud.

(E) Traverse the rejection arguing that the examiner's rejection under 35 U.S.C. § 102(e) was improper because Pete's claim is not anticipated by the patent to Bud.

The model answer is selection E.

MPEP § 706.02 points out the distinction between rejections based on 35 U.S.C. §§ 102 and 103. For anticipation under 35 U.S.C. § 102 the reference must teach every aspect of the claimed invention either explicitly or impliedly. (A), (B), (C), and (D) are each incorrect because each reply does not address the lack of anticipation by Bud. (A) is further incorrect. It is proper to take official notice without citing a reference until the practitioner challenges the examiner to provide support. Until seasonably challenged, the examiner would not have to provide support for the official notice. MPEP § 2144.03. (B) is further incorrect because a § 102(e) reference can properly have a patent date after the filing date of an application. (C) is further incorrect because no amendment is necessary. (D) is further incorrect because a prima facie case of obviousness is not necessary in a rejection under 35 U.S.C. § 102.

Petitioner argues that answer (C) is correct. Petitioner contends that based on case law, the Examiner will likely issue a 102/103 rejection as soon as the applicant traverses the rejection. Petitioner contends that “to find answer (C) incorrect one must assume that the WMS Gaming court finding of fact in the published opinion is not prior art . . .”.

Petitioner’s arguments have been fully considered but are not persuasive. Contrary to petitioner’s statement that it is proper for an applicant’s representative to amend claims in view of an improper rejection, it is proper to traverse improper rejections. Additionally, if applicant amends the claims, the examiner could make the next office action a final rejection. By traversing the rejection, applicant receives the benefit of seeing and reviewing the prior art that might be relied upon by the examiner and reviewing the examiner’s § 103 rejection. Accordingly, model answer (E) is correct and petitioner’s answer (C) is incorrect.

No error in grading has been shown. Petitioner’s request for credit on this question is denied.

Morning question 8 reads as follows:

8. Which of the following is true?

(A) If after the filing of a reissue application no errors in the original patent are found, a reissue patent will be granted on the reissue application noting no change, and the original patent will be returned to the applicant.

(B) In order to add matter not previously found in the patent, a continuation-in-part reissue application must be filed.

(C) In a reissue application, additions and deletions to the original patent should be made by underlining and bracketing, respectively, except for changes made in prior Certificates of Correction and disclaimer(s) of claims under 37 C.F.R. §1.321(a).

(D) A dependent claim may be broadened in a reissue application only in the first two years of the enforceable life of the patent.

(E) (A), (B), and (C).

The model answer is selection C.

See MPEP § 1411.01. As to (A) see MPEP § 1402. A reissue patent is not granted. As to (B), new matter may not be entered in a reissue. As to (D) see MPEP § 1412.03, p.1400-13. Since (A), and (B) are incorrect, (E) is incorrect.

Petitioner argues that answer (D) is correct. Petitioner contends that the statement is not false because the question does not present any context for the question. Petitioner argues that to find the statement false one would have to assume facts not presented

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's argument that broadening a dependent claim would broaden a patent, which has to be commenced within the two year time limit. A dependent claim inherently has all of the elements of the independent upon which it depends, thus it is not considered to be broadening the patent and the two year limit does not apply. See MPEP 1412.03, p.1400-13. Accordingly, model answer (C) is correct and petitioner's answer (D) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Morning question 25 reads as follows:

25. In June 1997, Jack and Jill, a married couple, are vacationing in Vietnam (not a WTO country) when they encounter a man selling bamboo knives for cleaning fish. The particular curvature of the bamboo both lends support to the knife to prevent it from bending and breaking and facilitates cleaning inside the fish. Jill takes a picture of Jack with the knife cleaning the fish. Subsequently, in November 1997, when Jack returns to the United States he begins to make and sell a identical knife to the one seen in Vietnam. In July 1998, he files a patent application claiming the nearly identical knife. Jack discloses no prior art during the prosecution of his application and fails to mention the knife he saw in Vietnam. The examiner finds no prior art similar to the claimed knife, and Jack is awarded a patent in December 1999. Meanwhile, Jill divorces Jack, and associates with Sam. Unfortunately, Sam is penniless. To raise cash, Sam and Jill begin selling a knife identical to the one Jack produces, only Sam and Jill make their knife out of plastic. The knives of Sam and Jill sell like hotcakes. Jack sues for infringement. Jill and Sam come to you for advice. Which of the following is not true?

(A) Jack had a duty under 37 C.F.R. § 1.56 to disclose his discovery of the bamboo knife in Vietnam to the examiner during the original patent prosecution.

(B) Jack is entitled to patent protection since Vietnam is not a WTO country and evidence of the Vietnamese knife cannot be used against him to reject his patent claims.

(C) Since the use in Vietnam was not in this country, it does not constitute a public use bar under 35 U.S.C. § 102(b).

(D) If Jill's attorney files a request for reexamination, it will be denied because the picture is not a patent or printed publication.

(E) Although Jack marketed the invention before obtaining a patent, the patent claims cannot be invalidated under 35 U.S.C. § 102(a) since Jack's making and selling of the knife cannot be used against him under 35 U.S.C. § 102(a).

The model answer is selection B.

Answer (B) is not true since Jack was not the first to invent the knife, therefore he is not entitled to a patent. Jack derived the invention from another, and the picture of Jack with the Vietnamese knife is evidence of derivation. 35 U.S.C. § 102(f) ; MPEP § 2137. Answer (A) is correct in that Jack should have disclosed "all information material to patentability," including the existence of the Vietnamese knife, during the original patent prosecution. (C) is correct in that to qualify as prior under 35 U.S.C. § 102(b), the use must be in this country. (D) is correct in that a request for reexamination must be based upon patents and printed publications. (E) is correct in that public use derived from the inventor's own work cannot be used against the inventor under 35 U.S.C. § 102(a). MPEP § 2132.

Petitioner argues that answer (D) is correct. Petitioner contends that a picture is not necessarily distinct from a printed publication. Petitioner further contends that since the fact pattern is silent on whether or not the picture was published, one would have to assume facts not presented to find (D) to be a correct statement. Therefore petitioner argues that (D) is false statement.

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement that one would have to presume facts not presented to state that (D) is a false statement. Since the facts do not state that the picture was published, one would have to assume facts not presented to argue that it was published. Additionally, the instructions state that applicant is suppose to select the one most correct answer for each question and the model answer (B) is always not true. Accordingly, model answer (B) is correct and petitioner's answer (D) is incorrect.



No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 2 reads as follows:

2. Which of the following is not a proper incorporation by reference in an application prior to allowance according to USPTO rules and procedures?

(A) Incorporating material necessary to describe the best mode of the claimed invention by reference to a commonly owned, abandoned U.S. application that is less than 20 years old.

(B) Incorporating non-essential material by reference to a prior filed, commonly owned pending U.S. application.

(C) Incorporating material that is necessary to provide an enabling disclosure of the claimed invention by reference to a U.S. patent.

(D) Incorporating non-essential material by reference to a hyperlink.

(E) Incorporating material indicating the background of the invention by reference to a U.S. patent which incorporates essential material.

The model answer is selection D.

MPEP § 608.01(p). (A) is incorrect because abandoned applications less than 20 years old can be incorporated by reference to the same extent as copending applications. (B) is incorrect because non-essential material may be incorporated by reference to patents or applications published by the United States. (C) is incorrect because material necessary to provide an enabling disclosure is essential material, which may be incorporated by reference to a U.S. patent. (E) is incorrect because non-essential material may be incorporated by reference to a U.S. patent which incorporates essential material.

Petitioner argues that answer (A) is correct. Petitioner contends that none of the answers state that the incorporation by reference includes designating the location in the document where the subject matter is found. Thus, petitioner argues that all of the choices are improper and that all of the answers should be given credit.

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement that none of the answers are absolutely correct, the instructions state that applicant should select the best answer. Incorporating material by reference by a hyperlink is clearly improper. Accordingly, model answer (D) is correct and petitioner's answer (A) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 4 reads as follows:

4. In January 1997, Chris invents an electrical door stop for automatically stopping a door at any position by simply pressing the doorknob downward. The doorknob is such that when carrying a large package, one may rest the package on the doorknob to stop the motion of the door. During a lunch break before completing the writing of the application for the patent on the automatic door stop, Chris' patent agent, Sam, visits a local Shack restaurant and notices a door stop which is actuated by stepping with one's foot on a mechanical lever located at the bottom of the door. Sam makes a mental note to ask a colleague as to whether he needs to disclose the doorstop at the Shack restaurant to the USPTO in conjunction with Chris' application in an information disclosure statement, but ultimately neglects to do so. Sam knows that the restaurant (and doorstop) was in existence at least one year prior to Sam's visit. In the first Office action, the only prior art uncovered by the examiner relates to stopping a door using a lever that engages a channel in the ceiling upon being pressed upward. The examiner rejects the claim asserting it would have been obvious to have either upward or downward actuating motion. In the reply to the first Office action Sam argues that the downward motion is essential because it affords the ability to actuate when one is carrying a package and that the prior art does not disclose a downwardly actuated doorstop. Following Sam's argument, the case issues. Claim 1 reads as follows:

1. A door stop for automatically stopping the pivoting action of a door by pressing downward, said door stop comprising:  
a) first means attached to a door for receiving a downward movement;  
b) second means for actuating a mechanism for engaging the floor surface in response to the downward movement of the first means, said first and second means being operatively connected.

Which of the following is true?

(A) Since Sam knew of the doorstop at the restaurant and not Chris, there is no duty to disclose the Shack restaurant doorstop. An attorney need not disclose that which is within his personal knowledge in an information disclosure statement.

(B) Since Sam discovered the Shack restaurant device after he had started writing the application, the invention was fully disclosed to Sam. There is no need to disclose that which occurs after an inventor completes his application disclosure.

(C) Sam needs to disclose only patents or printed publications to the USPTO to satisfy

the duty of disclosure. Since Sam was unaware of any patent or printed publication for the Shack restaurant doorstop, Sam does not need to file an information disclosure in this regard.

(D) Chris should file a request for reexamination seeking to have the Shack restaurant door stop considered.

(E) None of the above.

The model answer is selection E.

Since the claim reads on a downward moving actuator and only a upward moving actuator was cited during the prosecution, the Shack restaurant device was material to the patentability of the invention. Moreover, Sam argued the significance of the downward motion feature. 37 C.F.R. § 1.56(b)(2)(i). Sam should have disclosed it under 37 C.F.R. § 1.56(c)(2). As to (A), the duty of disclosure extends to each practitioner who prepares or prosecutes the application. 37 C.F.R. § 1.56(c)(2). As to (B), even though Chris had completed the disclosure, the sighting of the Shack restaurant doorstop occurred prior to the filing date. Moreover, the restaurant (and doorstop) was in existence at least one year prior to Sam's visit. MPEP § 2001.06. As to (C), information material to the invention is more than just patents and printed publications. 37 C.F.R. § 1.56; MPEP 2001.04, p.2000-4. As to (D), only patents and printed publication may be considered during a reexamination. 35 U.S.C. § 303(a); MPEP § 2209.

Petitioner argues that answer (D) is correct. Petitioner contends that seeking to have a reexamination with the restaurant doorstop considered is the correct answer. Petitioner argues that for this to be an incorrect answer, one would have to assume facts not presented, i.e. that there is not a publication on the doorstop.

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement that one would have to assume facts not presented for (D) to be an incorrect answer, the question does not pose requesting a reexamination based on a publication of the restaurant doorstop. The instructions state that applicant is supposed to select the best answer and not to presume facts not presented and applicant is presuming facts not presented. The USPTO may only consider patents and printed publication during a reexamination. 35 U.S.C. § 303(a); MPEP § 2209. Accordingly, model answer (E) is correct and petitioner's answer (D) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Please answer questions 19 and 20 based on the following facts:

Your client, Bill, disclosed to you the following. While hiking, he found a natural specimen of tree sap that had bonded rock material to a log, and was impervious to water. Bill realized that the sap would be an excellent roofing material for bonding asphalt shingles to wooden sheathing. Bill performed a chemical analysis of the sap and determined it was 10% A, 30% B, and 60% C. Bill experimented and found that he could synthetically produce the sap by mixing one part A by weight and three parts B by weight at 20 degrees Celsius, heating the mixture of A and B to 100 degrees Celsius, adding six parts C by weight, and cooling the mixture of A, B, and C to 20 degrees Celsius. Bill further experimented and found that if he added an effective amount of D to the mixture of A, B, and C, prior to cooling, the viscosity of the product would decrease, making it easier for roofers to apply it to wooden sheathing. You draft a patent application with a specification having all the information disclosed to you by Bill, including guidelines that explained that an effective amount of D for decreasing the viscosity is between 1% to 2% of the total weight of the mixture of A, B, and C, after cooling. The guidelines also explained that an effective amount of D for brightening the color of the composition is between 3% to 4% of the total weight of the mixture of A, B, and C, after cooling.

Afternoon question 19 reads as follows:

19. Which if any of the following claims, included in Bill's application, would not be properly rejected pursuant to 35 U.S.C. § 101?

Claim 1. A composition for bonding asphalt shingles to wood sheathing and a method, comprising: a mixture of 10%A, 30%B, and 60%C, and adding an effective amount of D to decrease the viscosity of the mixture.

Claim 2. A composition for bonding asphalt shingles to wood sheathing, comprising 10% A, 30% B, and 60% C.

Claim 3. A composition produced by the steps of: mixing one part A by weight with three parts B by weight at 20 degrees Celsius to form a mixture of A and B; heating the mixture of A and B to 100 degrees Celsius; adding six parts C by weight to form a mixture of A, B, and C; cooling the mixture of A, B, and C to 20 degrees Celsius; and adding an effective amount of D to decrease the viscosity of the composition.

- (A) Claim 1
- (B) Claim 2
- (C) Claim 3
- (D) Claims 2 and 3
- (E) None of the above.

The model answer is selection C.

Patentability of a product claimed by a product-by-process claim is based on the product itself, and the claimed subject matter in claim 3 is not naturally occurring. MPEP § 2105. (A) is incorrect because claim 1 recites both a product and a process in the same claim and is therefore not within one of the statutory classes set forth by 35 U.S.C. 101. MPEP § 2173.05(p), subpart (II). (B) and (D) are incorrect because claim 2 is drawn to a naturally occurring composition. MPEP § 2105. (E) is incorrect because (C) is correct.

Petitioner argues that answer (E) is correct. Petitioner contends that claim 3 would be properly rejected under § 101, because ingredient D is added after the cooling step, while the description of the method states that it is added prior to cooling. Petitioner argues that the claim 3 is different from that which is described, thus it lacks utility.

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement, patentability of a product claimed by a product-by-process claim is based on the product itself. While the claim might be indefinite under § 112, second paragraph, the claim is not necessarily properly rejected under § 101. Claim 3 does not give the order of when ingredient D is added, it simply states that ingredient D is added. Accordingly, model answer (C) is correct and petitioner's answer (E) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 43 reads as follows:

43. An article in a popular scientific journal, dated January 13, 1998, fully discloses and teaches how to make a "Smart Shoe" wireless telecommunications device. The article discloses a shoe having a dialer in a rubber sole of the shoe. The article does not teach or suggest using a metallic shoelace as an antenna or for any other purpose. Which of the following claims in an application filed January 20, 1999 is/are anticipated by the journal article, and is/are not likely to be properly rejected under 35 U.S.C. § 112, second paragraph as indefinite?

Claim 1. A telecommunications device comprising: a shoe having a rubber sole; a dialer in the rubber sole; and optionally a metallic shoelace.

Claim 2. A telecommunication device comprising: a shoe having a rubber sole; a dialer in the rubber sole; and a metallic shoelace.

Claim 3. A telecommunication device comprising: a shoe having a rubber sole; a dialer in the rubber sole; and optionally a random access memory for storing telephone numbers.

- (A) Claim 1.
- (B) Claim 2.
- (C) Claim 3.
- (D) Claims 1 and 3.
- (E) None of the above.

The model answer is selection D.

MPEP § 2173.05(h). *Ex Parte Cordova*, 10 USPQ2d 1949 (Bd. Pat. App. & Inter. 1989) and 35 U.S.C. § 102(b). (B) is incorrect since the article does not disclose a metallic shoelace. Since the “optional” element does not have to be disclosed in a reference for the claim to be anticipated, claims 1 and 3 are each anticipated by the article. Thus, (A), (C), and (E) are incorrect.

Petitioner argues that answer (E) is correct. Petitioner contends that none of the claims are indefinite and none of the claims are anticipated by the article. Petitioner argues that the claims are not anticipated because the article must teach every element of the claim and the optional items are elements of the claim.

Petitioner’s arguments have been fully considered but are not persuasive. Contrary to petitioner’s statement that an optional element must be disclosed in a reference to anticipate a claim. An “optional” element does not have to be disclosed in a reference for the claim to be anticipated by the reference. Therefore, claims 1 and 3 are each anticipated by the article, as the optional elements do not have to be disclosed in the reference. See MPEP § 2173.05(h). *Ex Parte Cordova*, 10 USPQ2d 1949 (Bd. Pat. App. & Inter. 1989) and 35 U.S.C. § 102(b). Accordingly, model answer (D) is correct and petitioner’s answer (E) is incorrect.

No error in grading has been shown. Petitioner’s request for credit on this question is denied.

**ORDER**

For the reasons given above, no point has been added to petitioner's score on the Examination. Therefore, petitioner's score is 64. This score is insufficient to pass the Examination.

Upon consideration of the request for regrade to the Director of the USPTO, it is ORDERED that the request for a passing grade on the Examination is denied.

This is a final agency action.

A handwritten signature in black ink, appearing to read 'Robert J. Spar', is positioned above a horizontal line.

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Robert J. Spar  
Director, Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy